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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Note verbale dated 15 December 2000 from the Permanent Mission of Iraq to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

The Permanent Mission of the Republic of Iraq to the United Nations Office in Geneva presents its compliments to the United Nations High Commissioner for Human Rights and has the honour to enclose herewith a document entitled "Remarks on Iraqi Missing Persons" in Arabic, English and French.*

The Permanent Mission of the Republic of Iraq would be grateful if the High Commissioner for Human Rights could arrange to have this document distributed as an official document of the fifty-seventh session of the Commission on Human Rights, under the agenda item entitled "Question of the violation of human rights and fundamental freedoms in any part of the world".

* Reproduced as received, in Arabic, English and French only.

Annex

The Iraqi Missing Persons

1. The number of the Iraqi missing persons stands now at (1150) persons.
2. The Kuwaiti authorities so far have provided only scanty and contradictory information on few missing Iraqis. Almost all the information provided by the Kuwaiti authorities is to the effect that the Iraqi missing persons were residing in Kuwait before the Iraqi forces entered the country in August 1990 but know nothing about their subsequent fate.
3. For their part, the Iraqi authorities have submitted to the Kuwaiti authorities all the evidence relating to the disappearance of the missing persons and it is firm evidence meriting serious consideration. Among those missing Iraqis are civilians who were arrested in their homes in Kuwait in front of their families after the withdrawal of the Iraqi army from Kuwait. Others are civilians and military personnel who were seen by Iraqi and Arab witnesses in Kuwaiti detention centers or military hospitals during the first half of 1991 but who subsequently disappeared. While in the meetings of the Technical Subcommittee the Kuwaiti authorities kept asserting their willingness to ascertain the fate of the missing Iraqis, in practice they have so far failed to provide any information that might help in ascertaining their fate. In fact, the Kuwaiti Authorities have been ignoring all the Iraqi requests to shed light on the fate of the Iraqi missing persons. These authorities used to provide illogical answers claiming that they were not in control over the situation in Kuwait after the withdrawal of the Iraqi forces. They also claimed that some irregular groups were responsible for the arrests of the Iraqi civilians and military personnel but they were unable to identity these groups. Later, the Kuwaiti authorities retracted from this position claiming that they were under control of the situation in side Kuwait but have no information about any Iraqi missing persons.
4. In the annex to the Kuwaiti paper circulated in New York in 1998, it is stated that there is an essential difference between missing Iraqis on the one hand and Kuwaiti "prisoners of war" on the other. The Kuwaiti authorities base this distinction on the contention that the Iraqis consisted of military personnel who were lost while on duty in military operations whereas the Kuwaitis consisted of civilians and off duty military personnel. Those authorities also claim that the ICRC acknowledged this difference by referring to the Kuwaiti POW's as " missing prisoners". On this point, it should be noted that the ICRC is on record in saying that: "It has to be stressed that the expression 'missing prisoner' is not used by the Geneva Conventions and

therefore has no particular legal significance." Moreover, among the files submitted to the Iraqi authorities on the missing Kuwaitis are those relating to the scores of Kuwaiti citizens who left their homes never to return. They include those who were suffering from psychological disorders or mental illness; those who were lost in their wanderings over the desert between Kuwait and Saudi Arabia, and women who ran away from their husbands or their families for one reason or another. Can anyone, then, designate such groups as "missing prisoners" or " prisoners of war"?

5. By attempting to create a distinction between missing Iraqis and missing Kuwaitis, Kuwait has no other purpose than to shirk its obligations under the Geneva Conventions. The assertion that all the missing Iraqis were military personnel who were lost while on duty is wide of the mark, for it is well-known that a fairly large number of the missing Iraqis who had been arrested at their homes in Kuwait by the Kuwaiti security forces were unarmed civilians whose arrest took place in front of their families. On the other hand, there are many witnesses who confirm having seen Iraqi detainees in Kuwaiti detention centers at different periods.

April 2000

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